

## REMARKS

### STATUS OF THE CLAIMS

Claims 4-15 were pending in this application. Claims 11, 12, and 14 have been canceled herein. Claims 4, 8, 13 and 15 have been amended herein.

Claims 4-7 were previously withdrawn with the possibility of rejoinder; claims 4-7 are method claims dependent on the pending composition claim 8. Claims 9-10 and 15 were previously withdrawn as being drawn to a non-elected sequences with the possibility of rejoinder should generic claim 8 be found to be allowable.

Following entry of the amendments claims 8 and 13 will be pending and at issue.

### SUPPORT FOR AMENDMENTS TO THE CLAIMS

The claims have been amended to replace the language “a complement” with the language “the complement.” Support for the amendments can be found throughout the specification as filed. These amendments were made to merely correct informalities in the claim language.

Claims 13 and claim 15 has been amended to merely correct informalities in the claim language.

The amendments to the claims therefore add no new matter and entry is respectfully requested.

### CLAIM OBJECTIONS

**Claims 11-13** were objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Claims 12 has been canceled herein.

Without agreeing with the Examiner’s position but rather to further prosecution, Applicant has amended claim 11 to recite “the polynucleotides of claim 8, further comprising a set of oligonucleotides” and has amended claim 13 to recite “the polynucleotides of claim 10,

further comprising a set of oligonucleotides.” The amended claims clearly limit the subject matter of the claims from which they depend. Withdrawal of this objection is requested.

### **REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH**

**Claims 8 and 11-13** were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Examiner stated

This rejections includes a new matter rejection.

Claim 8 is drawn to a composition comprising a first and second isolated polynucleotide of SEQ ID No. 4 or. a complement thereof and SEQ ID No. 8 or. a complement thereof. The recitation of "a complement" broadly encompasses any two or more nucleotides of SEQ ID No.4 and SEQ ID No. 8. Additionally the recitation of "a complement" broadly encompasses fragments of SEQ ID no. 4 and 8 which includes variants mutants, and homologs of SEQ ID No.4 and SEQ ID No. 8 with a minimum of two nucleotides of SEQ ID No. 4 and SEQ ID No. 8 that are not described in the specification.

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It is noted this rejection can be overcome by reciting SEQ ID NO:4 or the complement thereof ... SEQ ID NO:8 or the complement thereof.

The claims have been amended to recite “the complement” rather than “a complement.” Withdrawal of this rejection is requested.

**Claim 11** was rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Without agreeing with the Examiner, Claim 11 has been canceled herein.

### **REJECTIONS UNDER 35 U.S.C. § 102**

**Claim 8** was rejected under 35 U.S.C. 102(b) as allegedly anticipated by Hu et al. (J. Bacterial. 1998, vol. 180, pages 51 92-5202) and also as allegedly anticipated by Brennan (US Patent 54474796). For both rejections the Examiner stated “This rejection can be overcome by reciting SEQ ID NO:4 or the complement thereof ... SEQ ID NO:8 or the complement thereof.” The claims have been amended accordingly and withdrawal of this rejection is requested.

## CONCLUSION

Consideration of the claims is respectfully requested, and a notice of allowance is earnestly solicited. If the Examiner has any questions concerning this Response, the Examiner is invited to telephone Applicant's representative at (415) 875-2316.

Respectfully submitted,  
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